

MEMORANDUM
MONROE COUNTY PLANNING DEPARTMENT
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To: The Planning Commission

From: Heather Beckmann, Principal Planner *HBP*

Date: August 31, 2006

RE: *Swift, Variance*



I MEETING DATE: September 13, 2006

II REQUEST:

A. **Proposal:** Variances for the rear and side-yard setbacks for two (2) after-the-fact structures.

B. **Location:**

1. Cudjoe Key, Mile Marker: 22.8
2. 22836 Overseas Highway
3. Block 1, Lot 44, Cudjoe Ocean Shores
4. Real Estate Number: 00187020.000000

C. **Applicant:**

1. Owner: Steven and David Swift
2. Agent: None

III PROCESS:

The applicant is requesting a variance to resolve a Code Violation and to pursue an after-the-fact building permit. The variance is to reduce the required rear yard setback of ten feet (10') to zero (0) feet abutting the property line. In addition, a western side yard variance would be required to reduce the setback from five (5) feet to one (1) foot. The garage extends into the neighboring Lot to the East and will either require a variance from ten (10) feet to zero (0) feet or for the two (2) lots to be aggregated.

As mentioned, the granting of these variances will allow two (2) nonconforming after-the-fact structures (shed and garage) to be reviewed for building department approval.

IV BACKGROUND INFORMATION:

A. **Property Size:** 7,855 square feet (0.18 acres)

1 **B. Land Use District:** Suburban Commercial (SC)

2
3 **C. Future Land Use Map Designation:** Mixed Use / Commercial (MC)

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5 **D. Proposed Tier Designation:** Tier III, Infill Area

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7 **E. Existing Use and Conditions:**

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9 The subject property is currently developed. There is a two (2)-story building on the
10 property facing US 1 which consists of 3,030ft² of nonresidential floor area (excluding
11 the shed and garage). The first floor of the building is being used for Bluewater Printing
12 and the second floor is composed of one (1) dwelling unit. In addition to the building,
13 there is a small shed (132 ft²) and garage (550 ft²) to the rear of the property.

14
15 **F. Community Character of Immediate Vicinity:**

16
17 The community character in the immediate vicinity can be described as a mixture of uses
18 with a combination of commercial, residential and storage.

19
20 **V REVIEW OF APPLICATION:**

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22 Section 9.5-523 (f) contains eight standards that must **ALL** be met for application approval by
23 the Planning Commission. Staff has made the following findings of fact and conclusions of law
24 regarding the applicant's compliance with the standards for administrative variance approval.

25
26 1) The applicant shall demonstrate a showing of good and sufficient cause:

27
28 A demonstration of good and sufficient cause has not been demonstrated by the applicant.
29 A site visit revealed that the use of the garage is for the storage of a vehicle and
30 motorcycles.

31
32 The appropriate procedure for a variance request should be pursued prior to the building
33 of the structures. Instead, the applicant constructed two (2) structures, a garage and shed
34 in the rear and side yard without first requesting variances and secondly requesting a
35 building permit. Following a Code Enforcement application, the applicant applied for
36 vinyl siding to the shed. It was brought to the building department's attention that the
37 shed needed a permit. Upon the building department's review, it was determined that the
38 shed and garage are in the rear and side yard setbacks.

39
40 2) Failure to grant the variance would result in exceptional hardship to the applicant:

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42 A hardship could result in such that the failure to grant this variance would require the
43 applicant to demolish the garage and the shed. However, this is not considered an
44 exceptional hardship.

- 1 3) Granting the variance will not result in increased public expenses, create a threat to
2 public health and safety, create a public nuisance or cause fraud or victimization of the
3 public:

4
5 Staff is concerned that a public nuisance could be created for the immediate property
6 owner to the South since the garage was placed directly on the rear property line.
7

8 The parcel directly to the South was approved for storage, warehouse and low-intensity
9 commercial retail uses with a ten (10) foot rear yard setback (DO 05-89). The commercial
10 building to the West was approved with a building permit (94-1-0213) and a 15 foot side
11 yard setback.
12

- 13 4) The property has unique or peculiar circumstances which apply to the property but which
14 do not apply to other properties in the same zoning district.

15
16 Staff does not see peculiar circumstances which apply solely to the subject property,
17 particularly because it appears that the garage and shed could be relocated on the property
18 in such a way that meet the side and rear yard setback requirements.
19

- 20 5) Granting the variance will not give the applicant any special privilege denied other
21 properties in the immediate neighborhood in terms of the provisions of this Chapter or
22 established development patterns:

23
24 This variance has not been requested by neighbors in the past. Therefore the granting of
25 this variance will not give the applicant any special privileges denied to other property
26 owners in the immediate vicinity.
27

- 28 6) Granting the variance is not based on disabilities, handicaps or health of the applicant or
29 members of his family.

30
31 The applicant has not provided evidence to support that this variance is based on any
32 disabilities, handicaps, or health concerns.
33

- 34 7) Granting the variance is not based on the domestic difficulties of the applicant or his/ her
35 family:

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37 The applicant has not provided evidence to support that this variance is based on any
38 domestic difficulties of the applicant.
39

- 40 8) The variance is the minimum necessary to provide relief to the applicant:

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42 Staff does not feel this variance is the minimum necessary to provide relief to the
43 applicant. According to the survey provided, it appears that the garage and shed could be
44 relocated to another location on the property which would not require a variance or would
45 require a variance of a lesser extent.
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1 VI STAFF RECOMMENDATION:

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3 Based on the findings of fact and conclusions of law, the Planning Department staff recommends
4 denial of the application for the following reasons:

- 5
6 1. The variance request has not met all eight (8) of the criteria as required by the Code.

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8 If the variance is granted by the Commission, Staff recommends the following conditions be
9 met:

- 10
11 1. The applicant shall aggregate the neighboring eastern Lot (RE # 00187010.0000000) so
12 that the garage can meet the ten (10) foot sideyard setback requirement.
13
14 2. The request of the fire marshal shall be met and includes the installation of four (4) hour
15 rated wall standards. The fire marshal shall review and approve the after-the fact building
16 permit prior to the issuance of the permit.
17